

CCRB INVESTIGATIVE RECOMMENDATION

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|---|---|---------------------------|--|------------------------------------|--|
| Investigator: Kaitlin Campbell | Team: Squad #13 | CCRB Case #: 201705417 | <input checked="" type="checkbox"/> Force | <input type="checkbox"/> Discourt. | <input type="checkbox"/> U.S. |
| | | | <input checked="" type="checkbox"/> Abuse | <input type="checkbox"/> O.L. | <input checked="" type="checkbox"/> Injury |
| Incident Date(s) Thursday, 06/29/2017 10:44 PM | Location of Incident: East 32nd Street and Snyder Avenue | Precinct: 67 | 18 Mo. SOL 12/29/2018 | EO SOL 12/29/2018 | |
| Date/Time CV Reported Thu, 06/29/2017 11:15 PM | CV Reported At: IAB | How CV Reported: Phone | Date/Time Received at CCRB Wed, 07/05/2017 11:56 AM | | |

| Complainant/Victim | Type | Home Address |
|--------------------|------|--------------|
| | | |

| Subject Officer(s) | Shield | TaxID | Command |
|-----------------------|--------|--------|---------|
| 1. POM Michael Becker | 117 | 954892 | 067 PCT |

| Witness Officer(s) | Shield No | Tax No | Cmd Name |
|-----------------------|-----------|--------|----------|
| 1. SGT Michael Scally | 03721 | 948132 | 067 PCT |
| 2. POM Trevor Neal | 2494 | 955253 | 067 PCT |
| 3. POM Pierre Pradieu | 20943 | 940593 | 067 PCT |

| Officer(s) | Allegation | Investigator Recommendation |
|----------------------|---|-----------------------------|
| A.POM Michael Becker | Abuse: Police Officer Michael Becker stopped § 87(2)(b) | |
| B.POM Michael Becker | Abuse: Police Officer Michael Becker searched § 87(2)(b) | |
| C.POM Michael Becker | Abuse: Police Officer Michael Becker refused to provide his shield number to § 87(2)(b) | |
| D.POM Michael Becker | Force: Police Officer Michael Becker used physical force against § 87(2)(b) | |
| E.POM Michael Becker | Force: Police Officer Michael Becker restricted § 87(2)(b)'s breathing. | |
| F.POM Michael Becker | Abuse: Police Officer Michael Becker frisked § 87(2)(b) | |

Case Summary

On June 29, 2017, at 11:15 p.m., § 87(2)(b) called 911, was connected to the NYPD Internal Affairs Bureau (IAB), and filed this complaint—a spinoff of which was forwarded to the CCRB on July 5, 2017 (Board Review 01).

On June 29, 2017, § 87(2)(b) was walking north on East 32nd Street toward Church Avenue in Brooklyn, around the corner from a loud house party that police officers had responded to. Police Officer Michael Becker of the 67th Precinct, dressed in plainclothes, approached § 87(2)(b) and asked him what happened. § 87(2)(b) did not respond to PO Becker and kept walking. PO Becker followed § 87(2)(b) stopped him, and placed his hands in § 87(2)(b)'s pockets (**Allegations A and B**). § 87(2)(b) asked PO Becker to show him his shield and PO Becker ignored him (**Allegation C**). PO Becker put § 87(2)(b) in a bear hug and lifted him off the ground, restricting his breathing (**Allegations D and E**). Four uniformed officers approached and stood to either side of § 87(2)(b). PO Becker frisked § 87(2)(b) (**Allegation F**). PO Becker did not find any weapons or contraband on § 87(2)(b) and § 87(2)(b) was not arrested or issued a summons.

PO Becker and the other officers walked away. § 87(2)(b) called 911 and told the operator he had been assaulted by a police officer. An ambulance was dispatched that arrived an hour later and brought § 87(2)(b) to § 87(2)(b).

No video footage of this incident was obtained.

Mediation, Civil and Criminal Histories

- § 87(2)(b), § 87(2)(c) (impair contract awards or CBAs) [REDACTED]
- On November 21, 2017 it was determined through a FOIL request to the NYC Comptroller's office that no Notice of Claim was filed regarding this incident.

Civilian and Officer CCRB Histories

- § 87(2)(b) [REDACTED]
[REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
- PO Becker has been the subject of one prior CCRB complaint in which a stop allegation was exonerated and a discourtesy allegation was unsubstantiated. He is currently the subject of another open CCRB complaint, case #201705029.

Potential Issues

- § 87(2)(b) said that he had X-rays taken and was prescribed an inhaler at § 87(2)(b) on the night of the incident and that he saw a doctor a few days after the incident because the pain in his side had not subsided and he was still having trouble breathing. The investigation was unable to corroborate these claims because § 87(2)(b) refused to sign HIPAA release forms on the counsel of § 87(2)(b), his lawyer, who told the investigation he would send § 87(2)(b)'s medical records

to the CCRB. The office of § 87(2)(b) has not produced these records, despite numerous requests from the CCRB.

- The investigation was unable to identify the four officers who stood beside § 87(2)(b) as PO Becker allegedly frisked him.

Findings and Recommendations

Allegation A –Abuse of Authority: Police Officer Michael Becker stopped § 87(2)(b)

Allegation F –Abuse of Authority: Police Officer Michael Becker frisked § 87(2)(b)

§ 87(2)(b) said that he was walking from his stoop at the southwest corner of § 87(2)(b) to take his clothes out of the dryer at a laundromat near § 87(2)(b) when he noticed PO Becker standing at the northwest corner of § 87(2)(b). § 87(2)(b) thought PO Becker was a police officer because he could see the outline of a bulletproof vest under his shirt. § 87(2)(b) was wearing mesh basketball shorts that had two pockets; he carried his wallet in one pocket and his phone in the other. He did not carry any weapons or drugs. § 87(2)(b) walked past PO Becker and heard him say “what happened?” § 87(2)(b) kept walking north on East 32nd Street. He heard PO Becker walk behind him and § 87(2)(b) turned around to face PO Becker, who was then a foot away from him. Two uniformed officers approached him from the right and two uniformed officers approached from the left. PO Becker placed § 87(2)(b) in a bear hug, lifted him off the ground, and put him back down on his feet. The four uniformed officers pressed their bodies against § 87(2)(b)'s arms, which were down at his sides and PO Becker then patted § 87(2)(b) down on the outside of his clothes. PO Becker did not find anything on § 87(2)(b) and he and the uniformed officers walked away.

According to PO Becker, he was in a car with Sergeant Michael Scally and two other anti-crime officers from the 67th Precinct when a call came over the radio that an officer needed assistance somewhere on East 32nd Street. PO Becker did not remember anything else about the call or whether he discussed the call with his fellow officers on their way to the location. When they arrived, PO Becker saw about fifty people “being loud,” exiting the front door of a private house, and “not leaving the street.” There was a large group of uniformed officers standing outside the house. PO Becker did not ask or learn from any officer about what was happening and did not know whether another officer was hurt.

PO Becker said he saw § 87(2)(b) “look around at all the cops there,” grab his waistband, and start walking “as if he was holding something.” In the UF-250 report PO Becker prepared, he noted § 87(2)(b) was “limping” (Board Review 02). PO Becker said he saw § 87(2)(b) leave the party but did not remember whether he exited the house, which direction § 87(2)(b) came from, where he was going, or whether he was with anyone. PO Becker did not remember which hand § 87(2)(b) used to grab his waistband or where on the waistband § 87(2)(b) placed his hand. PO Becker did not see the outline of a firearm or anything resembling a firearm near § 87(2)(b)'s waistband, and could not see whether § 87(2)(b) had pockets.

After observing § 87(2)(b) for an amount of time PO Becker could not estimate, PO Becker suspected § 87(2)(b) was carrying a firearm and decided to approach him. § 87(2)(b) walked northbound on East 32nd Street toward Snyder Avenue and PO Becker followed him. PO Becker said something such as, “Sir, police,” and told § 87(2)(b) to “stop” more than once. § 87(2)(b) did not respond. When PO Becker was about a foot away from § 87(2)(b) he did not remember whether he could see an outline of anything through § 87(2)(b)'s pants or near his waistband, but he suspected § 87(2)(b) was intoxicated because he smelled like alcohol, had

bloodshot watery eyes, and was slurring his speech—“cursing” at PO Becker and “calling [him] names” that PO Becker did not remember specifically.

PO Becker said he then attempted to frisk § 87(2)(b) s waistband by reaching his hands toward § 87(2)(b) s hips and the front of his waistband. However, § 87(2)(b) pushed PO Becker’s hands away with the backs of his hands. PO Becker said he tried to “calm § 87(2)(b) down” but could not describe how, and then attempted to frisk § 87(2)(b) s waistband a second time. § 87(2)(b) pushed PO Becker’s hands away with the backs of his hands apart a second time. This raised PO Becker’s suspicion that § 87(2)(b) was carrying a firearm. PO Becker picked § 87(2)(b) up in a bear hug and placed him back down on the ground. At some point—PO Becker did not remember when—two uniformed officers approached § 87(2)(b) from either side, took hold of § 87(2)(b) s hands, and held § 87(2)(b) s arms up. § 87(2)(b) did not fight against the officers. PO Becker said he ran his thumbs along the entire length of the inside of § 87(2)(b) s waistband and patted § 87(2)(b) s hips, back pockets, front pockets, and front of his waistband. PO Becker did not remember if he felt anything in or whether he reached into § 87(2)(b) s pockets.

According to Sgt. Scally, when the call came over the radio that an officer needed assistance, no additional information was provided but Sgt. Scally said it “sounded bad” because he heard screaming in the background. Sgt. Scally said that when the officers arrived, there were about ten uniformed officers and ten plainclothes officers standing in front of a house and civilians were in the street “behaving disorderly.” He spoke with Sergeant Alan Chau of the 67th Precinct who told him everything was “fine,” that no officer had been injured, and that the call was put over because the party was letting out. Aside from people behaving disorderly in the street and that loud music was playing, Sgt. Scally did not suspect there was anything criminal going on and he did not know of any violence taking place. Three to five minutes after he arrived, Sgt. Scally realized he did not know where PO Becker was. He asked the two other anti-crime officers on his team, and they also did not know. A few minutes later, PO Becker came walking toward Sgt. Scally, alone, from Snyder Avenue and told him he had just stopped a man on the street who he had suspected of possessing a weapon. PO Becker said the man refused to stay where he had been stopped and was intoxicated. PO Becker did not specify what kind of weapon he suspected the man of carrying and he did not say whether he was with another officer when he saw the man. Sgt. Scally told PO Becker he had to fill out a UF-250 report and watched him make a memo book entry.

According to the original event report (§ 87(2)(b)) a 911 caller said there were about thirty people in the street fighting, noting there were no weapons and unknown injuries (Board Review 05). Within five minutes of that call, two other people called 911 from the same location (§ 87(2)(b) §§ 87(2)(b))—one call had a lot of commotion in the background and no communication from the caller and the other was a woman requesting the police. The woman did not know whether there were any weapons or injuries (Board Review 05).

The UF-250 report that PO Becker prepared was initially rejected by Sgt. Scally because of a “clerical error” (Board Review 02). Sgt. Scally explained the error was that PO Becker initially checked the box indicating he had searched the man. Sgt. Scally returned the report to PO Becker and told him to mark that the man had been frisked, not searched, because that was what PO Becker told Sgt. Scally had happened.

Patrol Guide procedure 212-11 states that a stop may be conducted when a police officer has an individualized reasonable suspicion that the person stopped has committed, is committing,

or is about to commit a crime. The officer must be able to articulate specific facts establishing justification for the stop (Board Review 03).

Patrol Guide procedure 212-11 states that a frisk is authorized when the officer reasonably suspects the person is armed and dangerous (Board Review 03).

PO Becker stopped and frisked § 87(2)(b) because PO Becker suspected § 87(2)(b) was carrying a firearm. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation C –Abuse of Authority: Police Officer Michael Becker searched § 87(2)(b)
Allegation B –Abuse of Authority: Police Officer Michael Becker refused to provide his shield number to § 87(2)(b)

§ 87(2)(b) said that after PO Becker stopped him he said “I’m going to do this nicely,” and reached into § 87(2)(b)’s pockets with both of his hands. § 87(2)(b) pushed PO Becker’s hands away with the backs of his hands and told PO Becker he “[could] not do that.” § 87(2)(b) saw a gold chain around PO Becker’s neck and asked PO Becker to show him his shield. PO Becker ignored § 87(2)(b) and put his hands inside § 87(2)(b)’s pockets a second time. § 87(2)(b) pushed PO Becker’s hands away, and again told PO Becker he “[could] not do that.”

PO Becker did not remember whether he put his hands in § 87(2)(b)’s pockets at any point and said his shield was clipped to his waistband and visible throughout the incident. PO Becker said § 87(2)(b) did not ask to see his shield and he did not refuse to show § 87(2)(b) his shield.

§ 87(2)(g)

Allegation D –Abuse of Authority: Police Officer Michael Becker used physical force against § 87(2)(b)

Allegation E –Abuse of Authority: Police Officer Michael Becker restricted § 87(2)(b)’s breathing.

§ 87(2)(b) said that after he pushed PO Becker’s hands away the second time, four uniformed officers approached and stood to either side of him. PO Becker then reached his arms around § 87(2)(b)’s torso, § 87(2)(b) put his hands in the air, and PO Becker’s forearms pressed into the sides of § 87(2)(b)’s rib cage, restricting his breathing. PO Becker lifted § 87(2)(b) a couple of inches off the ground; § 87(2)(b) did not move; and PO Becker put him

back down on his feet a couple of seconds later. § 87(2)(b) immediately felt aching pain along the sides of his rib cage and in his mid-back and he was having trouble breathing. § 87(2)(b) walked home, sat down on his stoop, called 911, and told the operator he had been assaulted by a police officer who placed him in a chokehold and that his ribs hurt. The operator requested an ambulance which arrived about an hour later. § 87(2)(b) said he was transported to § 87(2)(b) where he had X-rays taken and was given an inhaler. § 87(2)(b) said he visited a private doctor a few days later because he was still having trouble breathing. § 87(2)(b) refused to sign HIPAA forms and so his medical condition and statements to medical personnel could not be corroborated.

According to PO Becker, after § 87(2)(b) pushed his hands away, he decided to put § 87(2)(b) in a bear hug to “calm him down” and prevent § 87(2)(b) from reaching for the firearm he suspected he was carrying. PO Becker said § 87(2)(b) was behaving “aggressive[ly]” toward PO Becker by cursing at him and calling him names. Other than pushing PO Becker’s hands away, PO Becker did not remember whether § 87(2)(b) made any threatening movements towards him.

PO Becker said he wrapped his arms around § 87(2)(b)’s back, pressed his chest against his, and squeezed him for less than thirty seconds. PO Becker did not remember whether § 87(2)(b)’s feet left the ground. § 87(2)(b) continued to curse at PO Becker while he was in the bear hug but he did not physically fight against PO Becker in any way. PO Becker did not remember § 87(2)(b) complaining of pain to his ribs or say he was having trouble breathing. In the UF-250 report he prepared and in his memo book, PO Becker noted § 87(2)(b) did not complain of any injuries.

Patrol Guide procedure 221-01 states that an officer may use force when it is reasonable to ensure the safety of an officer or third person or when it is reasonable to place a person in custody or to prevent escape from custody. In all circumstances, any application or use of force must be reasonable under the circumstances (Board Review 04).

§ 87(2)(g)

Squad: 13

Investigator: _____
Signature Print Date

Squad Leader: _____
Title/Signature Print Date

Reviewer:

Title/Signature

Print

Date